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FRED A. [illegible], Administrator of the Estate of Frank E. [illegible], Deceased, Plaintiff in Error and Petitioner,

vs.

THE NEW YORK LIFE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR DEFENDANT IN ERROR AND RESPONDENT.

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Supreme Court of the United States

OCTOBER TERM, 1900.

No. 199.

FRED A. McMASTER, ADMINISTRATOR OF THE ESTATE OF FRANK E. McMASTER, DECEASED, PLAINTIFF IN ERROR AND PETITIONER,

vs.

THE NEW YORK LIFE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR DEFENDANT IN ERROR AND RESPONDENT.

Preliminary Statement.

This is an action at law to recover the amount of five policies of insurance for $1,000 each, issued in favor of the plaintiff in error's intestate. Payment is refused by the company on the ground that the policies had expired prior to the death of the insured by reason of the failure to pay the second year's premiums thereon.

The applications for the insurance, dated December 12, 1893, were in writing, signed by the insured, and contain a request to "Please date policies same as applications."

The policies are dated December 18, 1893, but in plain type on their face, among other things, recite that:

> "This contract is made in consideration of the written application for this policy * * * and in further consideration of the sum of twenty-one dollars and — cents to be paid in advance, and of the payment of a like sum on the twelfth day of December in every year thereafter during the continuance of this policy."

The policies were tendered to and accepted by the insured on or about December 25, 1893, when the first year's premiums were paid in advance, as required. The premiums for the second year were not paid when due, nor have they since been paid or tendered.

The insured died on the morning of January 18, 1895.

If the premium-due date recited in the policies, namely, December 12, bound both parties to the contract, the insurance had expired prior to the death of the insured, and the judgments of both the circuit court and circuit court of appeals were correct.

The plaintiff in error seeks to avoid the effect of the plain terms of the written contract by showing:

> 1st. That the request "Please date policy same as application" was written into the application by the company's agent for his own benefit after the applica-

tion had been signed by deceased and without his assent or knowledge.

2d. That the applications for the insurance were signed by the insured "in the belief that if he accepted a policy of insurance upon his life, from the New York Life Insurance Company, paying the premiums thereon annually, the company could not assert the right of forfeiture until thirteen months had elapsed since the last payment of the annual premium." * * *

3d. That it was expressly agreed by the agent and the deceased at the time of signing the applications that the first premiums should be paid upon the delivery of the policies, and the contracts of insurance were not to take effect until the policies had been delivered; and the policies were delivered to the deceased on or about December 26, 1893, when he accepted them and placed them away without reading them.

5th. That at the time of the delivery of the policies and before the first premiums were paid the insured "asked the agent if the policies were as represented, and if they would insure him for the period of thirteen months, to which the agent replied that they did so insure him."

Plainly stated, the ultimate question involved in the case is whether, in the absence of fraud, as to which there is neither charge nor proof, a written contract of insurance, plain and specific in its terms, accepted and retained by the insured in his personal possession for more than a year prior to his death, shall be effective in a court of law according to its terms, or shall be reformed in such court, at the instance of the personal representatives of the insured, so as to accord with the

"belief" of the deceased as to the legal effect of such terms. It does not appear that the company was, directly or indirectly, actually or presumptively, advised as to the character or existence of such "belief;" which "belief," assuming it to have existed as found, depended for its existence upon alleged verbal statements of the soliciting agent made prior to or contemporaneously with the delivery of the contracts; which statements the agent had no authority to make, the want of such authority having been directly brought to the attention of the insured at the time he signed the applications for the insurance.

STATEMENT OF CASE.

The policies are dated December 18, 1893, and contain in clear type, on the first page, the following:

> "This contract is made in consideration of the written application for this policy, and of the agreements, statements, and warranties thereof, which are hereby made a part of this contract, and in further consideration of the sum of twenty-one dollars and — cents, to be paid in advance, and of the payment of a like sum on the twelfth day of December in every year thereafter during the continuance of the policy."
>
> "The benefits and provisions placed by the company on the next page are a part of this contract, as fully as if recited over the signature hereto affixed.'

Among the benefits and provisions so referred to are the following (pp. 8, 9):

> *Powers not delegated.*—"No agent has power in behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a

premium, to waive any forfeiture, or to bind the company by making any promise or making or receiving any representation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated."

Payment of premiums.—"All premiums are due and payable at the home office of the company, unless otherwise agreed in writing * * * If any premium is not thus paid on or before the day when due, then (except as hereinafter otherwise provided) this policy shall become void, and all payments previously made shall remain the property of the company."

Grace.—"After this policy shall have been in force three months, a grace of one month will be allowed in payment of subsequent premiums, subject to an interest charge of 5 per cent. per annum for the number of days during which the premium remains due and unpaid. During the said month of grace, the unpaid premium with interest as above, remains as indebtedness due the company, and in the event of death during said month, this indebtedness will be deducted from the amount of the insurance."

Attached to each policy at the time of its delivery and expressly made a part thereof was an abstract of the application for the insurance which had been signed by the insured, and which contained in the body thereof, above his signature, among other things not material here, the following (p. 11):

"10. Sum to be insured $5,000.
Five policies of $1,000 each.
Please date policy same as application.
Premium payable { Annually / Semi-annually / Quarterly

"11. I hereby agree as follows * * *

"2. That inasmuch as only officers at the home office of said company, in the city of New York, have authority to determine whether or not a policy shall issue on any application and as they act on the written statements and representations referred to, no statements, representations, promises or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on said company, or in any manner affect its rights, unless such statements, representations, promises or information be reduced to writing and presented to the officers of said company, at the home office in this application. * * *

"4. That any policy which may be issued under this application shall not be in force, until the actual payment to and acceptance of the premium, by said company, or an authorized agent, during my lifetime and good health."

On or about the 26th day of December, 1893, the policies were tendered to the insured by the company's agent and, the specified premiums in advance having been paid, the policies were accepted by the insured and placed away without having been read by him, "THOUGH HE HAD FULL OPPORTUNITY FOR READING THEM, AND THE AGENT DID NOT IN ANY WAY ATTEMPT TO PREVENT HIM FROM READING THEM" (p. 54).

Not later than November 17 1894, in accordance with the requirements of the laws of the State of New York, notice was sent to the insured of the coming due of the second premiums on the policies (p. 54), and on the 11th or 12th of December, 1894, an agent of the company, having in possession properly executed renewal receipts, called on the insured to collect said premiums (p. 54). At that time the insured de-

clined to make the payments, "saying that he had seen other policies which promised better results, and that he did not think he would renew the insurance in the defendant company." Thereupon the agent "stated that as * * * she understood it, the grace on the second premiums would expire January 11th, and the insured said if he concluded to keep any of the insurance he would call and pay for it before the grace expired" (pp. 54, 55).

The insured died on the morning of January 18, 1895, without having paid the second-year premiums. Proofs of death having been furnished by insured's administrator, coupled with a demand for payment of the insurance, but without payment or tender of the second-year premiums, the company declined to pay, on the ground that the policies had lapsed and were not in force at the death of the insured, by reason of his failure to pay the second-year's premiums (pp. 55, 56).

Suit was brought by the administrator of the insured, in the district court of Iowa in and for Woodbury county (p. 1), and was removed therefrom, on the petition of the defendant company, into the circuit court of the United States for the northern district of Iowa, western division, on the ground of diverse citizenship (p. 15).

The declaration or petition, as it is called, contains three counts, each of which avers the application for and issuance and delivery of the policies sued upon, and refers to a copy of the policies and the applications filed therewith, marked Exhibit "A," and made a part of each count.

Count *1* sets forth the provisions of the policies to the effect that they were not to be in force "until the actual de-

mand and acceptance of the first premium by the company or its authorized agent;" and also that after the policies had been in force three months a grace of one month was to be allowed in the payment of subsequent premiums, subject to an interest charge of 5 per cent. per annum for the number of days for which the premium remained due and unpaid, and avers the payment of the first premium on or about December 25, 1893, and the death of the insured on the morning of January 18, 1895.

Count *II* avers that the written applications for the insurance were made December 12, 1893; that after the applicant had signed the same, and without his knowledge or consent, the agent of the company who solicited the taking of the policies wrote into the respective applications the words "Please date policy same as application;" that the company executed said policies on December 18, 1893, and delivered same to the insured on December 25, 1893, &c., as in count *I*, (pp. 3, 4).

Count *III* sets out the making of the written applications for the insurance December 12, 1893; the signing of the policies by the company December 18, 1893, and their delivery to the insured December 25, 1893, and avers that—

> "said policies continued in force from the 25th day of December, 1893, for thirteen (13) months by reason of the payment of one year's premium, and by reason of the provisions and conditions of said policies, providing for one month of grace, and by reason of the understanding of said parties, that said policies, by the payment of said premiums, as hereinbefore stated, would be in force for thirteen (13) months, from the 25th day of December, 1893," &c.

substantially as in count *I* above.

The company admitted the issuance and delivery of the policies as stated and the acceptance of the first year's premiums; averred the giving of notice in advance under the New York statutes of the coming due of the second year's premium on said policies, which notices contained the statement that said policies would be forfeited if the premiums were not paid when due; that the plaintiff had received and accepted said policies during his lifetime and held them in his possession for a long time, and that by reason of such acceptance and retention by the insured the plaintiff was estopped from denying the date of the policies or claiming that said policies should have a different date from the application, and from claiming that the words "Please date policies same as application" were not in the application when the insured signed the same (pp. 20, 21).

The defendant, by an amendment to its answer (p. 23), further denied that there was any understanding or agreement between the parties that the policies should be in force, or that the premiums should become due at any other time, manner, or place than as stated and expressed in said policies, and also denied that there was any understanding or agreement that the policies should be in force or binding for thirteen (13) months from the 25th day of December, 1893, or any other time than that stated and expressed in the policy, and further averred that the applications signed by the insured and the policies accepted and retained by him contained the provision that "no agent has power in behalf of the company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise or making or receiving any represen-

tation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated."

After further amendments to the pleadings (pp. 26–30) the case came on for trial, and, a jury having been waived in writing (p. 31), the case was tried to the court.

The court made and filed eighteen (18) findings of fact (pp 52–56) and entered judgment thereon in favor of the defendant company (p. 56).

To review such judgment plaintiff sued out a writ of error from the circuit court of appeals for the eighth circuit, where the case was heard before Caldwell, Sanborn, and Thayer, circuit judges, and the judgment of the lower court was affirmed by a majority vote, Caldwell, J., dissenting.

The plaintiff in error, to recover, relied upon the following findings of fact made by the trial court, viz:

That the insured signed the application for the policies;

> "In the belief that if he accepted a policy of insurance upon his life from the New York Life Insurance Company, paying the premiums thereon annually, the company could not assert the right of forfeiture until thirteen months had elapsed since the last payment of the annual premium" (p. 53).

and that the words—

> "Please date policy same as application"

were written into the applications by the company's agent for his own benefit, after the signing thereof by McMaster; and that—

"it does not appear that Frank E. McMaster ever knew that these words had been written into the application, and it affirmatively appears that he had no knowledge thereof when the application was forwarded to the home office of the company and was acted upon by the company" (p. 53).

"9th. The five policies enclosed in envelopes on or about December 26, 1893, were taken by F. W. Smith, the agent of the defendant company, to the office of Frank E. McMaster (the insured), who asked the agent if the policies were as represented, and if they should insure him for the period of thirteen months, to which the agent replied that they did so insure him, and thereupon McMaster paid the agent the full first annual premium, or the sum of twenty-one dollars on each policy, and without reading the policies, he received them and placed them away."

"The agent did not in any way attempt to prevent McMaster from reading the policies and he had the full opportunity for reading them, but in fact did not read them, and accepted them on the statement of the agent of the company, as hereinbefore set forth" (p. 54).

"14th. That the action of Frank E. McMaster shows, and the court so finds the fact to be, that the said McMaster believed that the policies issued to him by the defendant company would continue in force for the period of thirteen months from the date of the policies," * * * (p. 55).

During the pendency of this action at law the plaintiff in error filed a bill in equity against the defendant company to require it to reform the written policies so as to make them accord with the "belief," but such relief was denied by

the United States circuit court of appeals for the eighth circuit and the bill was dismissed.

New York Life Ins. Co. *vs.* McMaster, admr., 87 Fed. Rep., 63.

An application to this court for a writ of certiorari to review that decree was also denied.

McMaster, admr., *vs.* New York Life Ins. Co., 171 U. S. 687.

ARGUMENT.

Upon the facts as found by the trial court the concurring judgments of that court and the circuit court of appeals were clearly right.

The case discloses a bald attempt to overcome the plain terms of a written contract by proof of verbal statements and representations made during preliminary negotiations or contemporaneously with the delivery and acceptance of the written contract itself, by an agent of limited powers and authority; there being no proof tending to disclose fraud or the existence of a mutual mistake on the part of the parties to instruments sued on, and it being expressly stipulated, both in the preliminary application and the contract, that such statements or representations, if made, should not be binding upon the company unless brought to its notice in writing.

It is an attempt to enfore the *obligation* of a written contract while admitting non-performance of its conditions and in contravention of its plain terms.

The facts relied on by the plaintiff in error to overcome the judgments of the lower court are immaterial in law,

and the testimony tending to prove them should have been excluded.

It is not disputed that the deceased applied to the company for insurance on his life, and that pursuant to such application the policies in suit were issued and accepted by the insured.

If the terms of the policies as written are binding upon the insured and his legal representatives, it is plain that no recovery against the company can be had in law or equity.

If the terms of the policies as written by the company and accepted by the insured are not binding upon the latter and his legal representatives, it would seem to be equally plain that there does not exist any contract of insurance that ought to be or can be enforced against the company. If the policies do not represent the contracts between the company and the insured, there was no contract between them, for it is undisputed that the only contract tendered by the company is that embraced within the four corners of the policies themselves. At most the company would be liable but for the return of the premiums received by it.

The trial court made eighteen (18) findings of fact; of these, those numbered 1, 2, 3, 5, 8, 10, 11, 15, 16, 17, and 18, eleven in all, are accepted by both parties to the suit and are relied upon by the defendant in error to sustain the concurring judgments of the lower courts.

Those numbered 4, 6, 7, 9, 12, 13, and 14 are deemed to be immaterial by the defendant in error, but are relied upon by the plaintiff in error and petitioner to secure a reversal of the judgments complained of.

It seems unnecessary to consume time and space in discussing the first group of findings. They are all pertinent to the issues raised by the pleadings.

Examining the findings embraced in the second group *seriatim:*

The 4th finding recites that the deceased signed the application for the insurance in reliance upon the terms of the "grace" provision, "and in the belief that if he accepted a policy of insurance * * * the company could not assert the right of forfeiture until thirteen months had elapsed since the last payment of the annual premium."

Whatever may have been the source of such belief—as to which the findings make no disclosure—the mistake would appear to have been one of law, involving as it did the construction of the contents of written instruments.

The "belief" does not appear to have been induced by the deceit of any person in the employ of the company, and at best it but constituted a mistaken idea that could and would have been dissipated by ordinary care or inquiry.

Prior to the delivery of the policies, no contractual relation existed between the company and the insured, and the former can hardly be held to respond to obligations it never assumed simply because the latter, who accepted and retained the instrument by which their respective rights and obligations were intended to be measured, was possessed of an undisclosed "belief" that the company would be bound otherwise than as therein set forth.

If such "beliefs," undisclosed on the one hand and unsuspected on the other, are to be projected into the terms of written contracts so as to control their operations, then the

whole body of law as to the binding effect of written instruments must be rewritten.

Upon the delivery and acceptance of the policies the contractual relations of the parties, their rights and reciprocal obligations, became defined thereby.

That parties to written instruments, while contracting about the same thing, formed different ideas or untrue conclusions as to the ultimate effect of the terms of the instrument in their relations to the subject-matter of the contract is no ground for relief against the effect of such terms as written if they be plain and unambiguous, unless the mistake be mutual.

A contract may be reformed in equity where an item of the preliminary oral agreement is not embodied in the written instrument through the fraud of one or the mistake of both of the parties to it; but the oral agreement and the fraud or the mutual mistake must first be clearly proved. Here no such preliminary *agreement* is set up. The plaintiff in error relied for relief solely upon the "belief" of one of the parties to the written instruments, and that a "belief" formed prior to the execution of the writing, which would have been dissipated by an inspection of the instrument itself.

The 7th finding is but declarative of one of the terms of the contracts as written, it being embodied both in the application and the policies themselves.

The 6th and 9th findings are particularly relied upon to secure a reversal and induce judgment against the company.

By the terms of the policies the second premiums become

due and payable December 12, 1894, and in default of payment within one month thereafter—that is, on or before January 12, 1895—the insurance lapsed.

To overcome this result, it is asserted by plaintiff in error and found as a fact by the trial court that the request "Please date policy same as application," upon which the company acted in making the second premiums fall due on December 12, was written into the application by the agent (Smith) for his own benefit, after the signing thereof by the insured and without his knowledge or consent, and that he, the insured, had no knowledge of such interpolation when the applications were forwarded to the home office and were there acted upon by the company.

Assuming the interpolation of these words to have been material in shaping the terms in which the policies were expressed, how does this affect the relations between the company and the insured or his legal representatives? It is not suggested that the company had knowledge of the fact that the words had been so interpolated, and it would seem to be unnecessary to argue the proposition that the agent had no authority from the company to falsify or forge applications for insurance. If there be ground for complaint it would seem to be true that the company, as well as the applicant, was imposed upon by the agent's unauthorized act. In such a case, assuming both parties to have acted in good faith, justice could at most but require the return of the premiums paid.

But is the case so favorable to the insured? He received the policies which had been issued in strict accord with the applications as received by the company, and placed them away for safe keeping. A single glance at any one of

the policies, each of which had a copy of the application annexed to it, would have disclosed the imposition, if such it was, that had been practiced both upon himself and the company by the agent, and if he had thought the matter of sufficient consequence it would have been his duty to bring it to the attention of the company without delay. It was his duty to examine the policies to see that they embodied the agreement between the agent and himself. The failure so to do was gross negligence.

Where an agent is apparently acting for his principal, but is really acting for himself or third persons, there is no agency in respect to that transaction. The finding of the trial court is specific, and to the effect that the interpolated request was inserted by the agent for his personal advantage. The fraud or imposition, if it be such, could not have been consummated by the agent alone. The assistance of the insured in some capacity was necessary. If upon delivery of the policies he became informed of the interpolation in the application and remained silent, he acquiesced in it. If he did not so inform himself, it was because of his own negligence, and that would equally bar a recovery in this action.

He could not hold the policies without approving the action of the agent and thus acquiescing in it. The retention of the policy was an approval of the terms of the applications as submitted to the company and of the terms of the policies as issued thereon. The consequence of that approval, after his death, cannot be avoided.

New York Life Ins. Co. *vs.* Fletcher, 117 U. S., 519.

But it is sought to overcome this result by the suggestion that when the policies enclosed in envelopes were handed to

the insured by the agent, Smith, the latter, in answer to an inquiry by the insured as to whether "they would insure him for the period of thirteen months," replied "that they did so insure him," and thereupon the insured paid the premiums, "and without reading the policies, he received them and placed them away."

In this connection it is to be noted that the trial court found that—

> "The agent did not in any way attempt to prevent McMaster from reading the policies and he had the full opportunity for reading them, but accepted them on the statement of the agent of the company as hereinbefore set forth."

The authority of the agent to make representations in connection with any insurance effected by him was expressly limited, and the existence of such limitation was brought to the knowledge of the applicant both by the terms of the application as signed by him and of the policy as received and retained by him.

That it is competent for any party, corporation, or individual, employing an agent in the negotiation of contracts, whether of insurance or otherwise, to limit his powers, and if the limitation be brought to the knowledge of the other contracting party, to bind him thereby, can hardly be doubted; and, as in this case, such limitations upon the agent's authority were expressly set forth both in the applications and the policies, and were thereby made a part of the contracts forming the basis of this suit, they should be given full effect. As it was distinctly declared in both papers that no statements, representations, promises, or information made or given by or to the person soliciting or taking

the application for the policy shall be binding upon the company or in any manner affect its rights unless such statements, representations, promises, or information be reduced to writing and presented to the officers of the company at the home office, it is difficult to perceive upon what ground the verbal representations of the agent and the understandings of the insured supposed to have resulted therefrom, and embodied in findings 4, 7, and 9, but not reduced to writing and presented to the officers of the company at the home office, can be deemed to operate as an estoppel against the company or to be in anywise material to the real issue involved in this suit.

In Union Mutual Life Insurance Company *vs.* Mowry (6 Otto, 544) the insured failed to pay the second-year premium when due, and shortly afterwards died. Thereafter the premium was tendered to the company, which refused to receive it on the ground that the policy had lapsed. It was sought to overcome the effect of the failure to pay the premium according to the terms of the policy by showing that the agent who induced the application for the insurance represented that the company would give notice in season to pay them, and that no such notice was given; but this court, in disposing of that contention, said:

> "All previous arrangements were merged in the written agreement. The understanding of the parties as to the amount of the insurance, the conditions upon which it should be payable and the premium to be paid, was there expressed, for the very purpose of avoiding any controversy or question respecting them." * * *

"If, by inadvertence, or mistake, provisions other than those intended were inserted, or stipulated provisions were omitted, the parties could have had recourse for a correction of the agreement to a court of equity, which is competent to give all needful relief. But, until thus corrected, the policy must be taken as expressing the final understanding of the assured and of the insurance company."

"The policy shows on its face that the authority to the agent was limited to countersigning it before delivery and to receiving the premiums. But even if the agent had possessed authority to make an insurance for the company and he made the agreement pretended, still the assured was bound by the terms of the policy subsequently executed and accepted by him."

As parol evidence is not admissible to show that a written contract varies from the previous agreement of the parties (La Farge *vs.* Rickert, 5 Wend., 187; 21 Am. Dec., 208), so also is parol evidence of a contemporaneous representation as to the legal effect of its contents likewise to be excluded.

It must presumed that McMaster read the applications and the policies and was fully cognizant of the limitations on the authority of the agent therein expressed.

Glove, &c., Ins. Co. *vs.* Wolf, 95 U. S., 329.

Ins. Co. *vs.* Norton, 96 U. S., 240.

The failure to read the policies, if in fact such failure continued after the date of their receipt, was gross negligence. It was the duty of the insured to read and acquaint himself with their contents, in order that any error or mistake or divergence from the terms of the application appearing in them might promptly be brought to the attention of the

company and corrected. By failing to report any such the insured must be presumed to have accepted the policies in accordance with their terms, and to have agreed that they should remain as the basis of the contract of insurance.

Insurance Co. *vs.* Fletcher, 117 U S., 519.

But in the case at bar we are not driven to rely upon presumptions alone. It appears that the attention of the insured was directly called to the date of expiration of these policies not once, but twice: First, by written notice sent not later than November 17, 1894, "in accordance with the requirements of the statutes of the State of New York" (Finding 10th, p. 54); second, by personal solicitation of one of the company's collecting agents, Miss Ball, "who on the 11th or 12th day of December, 1894, called on said McMaster for payment of the premiums in question, at which time McMaster declined making payment thereon, saying that he had seen other policies which promised better results, and that he did not think he would renew the insurance in the defendant company." Miss Ball told him that, "as she understood it, the grace on the second premiums would expire January 11th, and McMaster said if he concluded to keep any of the insurance, he would call and pay for it before the grace expired" (Finding 11th, pp. 54, 55).

In the face of such facts, how is it possible to accept the conclusion expressed in the 14th finding (p. 55), that "McMaster believed that the policies issued to him by the defendant company would continue in force for the period of thirteen months from the date of the policies."

Whatever "belief" he may have had on this point in the beginning can hardly be assumed to have continued after

the receipt of the notice of November 17, 1894, and the visit of Miss Ball on December 11 or 12. If he had not read the policies before such occurrences, as it was his duty to have done, he surely will not be excused for continued negligence in such a vital particular, and his failure thereafter to complain to the company or any one else should be deemed to evidence an acquiescence in the terms of such policies, at least from that late date.

In the absence of any remonstrance or complaint, after the date of expiration had been thus specifically brought to his attention, is it for a court of law to say that he did not acquiesce therein?

Findings 12 and 13, relating as they do to transactions and conversations had with persons not in anywise connected with the defendant company and neither directly or indirectly brought to its knowledge, would seem to be without bearing upon the issues involved in the suit, and consequently to require no further notice.

It is respectfully submitted that the judgments both of the circuit court and circuit court of appeals should be affirmed.

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